IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3637 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAMMED SALIM GULAMNABI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3637 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/07/2001

ORAL JUDGEMENT

Heard Mr.M.M.Tirmizi, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondents.

#. In the present petition, the petitioner has

challenged the order of detention dated 30th December, 2000 under Article 226 of the Constitution of India. The order of detention has been passed by the under District Magistrate, Bharuch Section 3[1] of the PASA Act. The grounds of detention are communicated and the same are supplied to the present petitioner under Section 9[1] of the PASA Act. The petitioner has been detained in District Jail Nadiad as Class-II detenu.

#. Learned advocate Mr.M.M.Tirmizi, appearing on behalf of the petitioner though he has raised contentions challenging the detention order but according to him submission, one contention in ground [p] of the petition is enough to vitiate the order of detention. The ground [p] as referred to in the petition, is quoted as under :-

"[p] The petitioner respectfully states that the statements of three witnesses have been recorded on 14-11-2000, 15-11-2000 and 17-11-2000 pertaining to the offences that took place on 24-10-2000, 01-11-2000 and 7-11-2000 respectively. All of these statements have been verified on 14-12-2000 by the Divisional Police Officer and on 26-12-2000 by the Detaining authority and the order of detention is passed on 30-12-2000. Thus, there is a delay of about one month in verification by the Div. Police Officer, over one month in verification by the detaining authority and a delay of about one and half month in passing the order. Moreover, the last registered offence is dated 16-7-2000 whereas the last unregistered offence is dated 16-7-2000 whereas the last unregistered offence is dated 7-11-2000, thus, there is delay of about four and a half months from the date of last registered offence and about two months from the last unregistered offence in passing the order of detention. Thus, there was no immediate need to preventively detain the petitioner. Thus, there is no proximity with the offence and the order of detention and this delay has vitiated the impugned order. Thus, the impugned order is required to be quashed and set aside."

Mr.M.M.Tirmizi, learned advocate has relied upon decision of this Court reported in 1997 [1] GLH 381.

#. Learned AGP Mr.H.L.Jani appearing on behalf of the respondents has submitted that looking the offence

registered as well as unregistered aginst the present petitioner, the detaining authority has rightly passed the detention order. He also submitted that looking to the facts and circumstances as well as material on record, there were compelling circumstances with the detaining authority to pass the detention order, otherwise the activities which were carried out at the material time by the petitioner, would have certainly adversely affected the public order. Therefore, there was no option with the detaining authority except to pass the detention order against the present petitioner. The order of detention is legal and valid and therefore no interference is required by this Court.

#. I have considered respective submission of learned advocates of the parties at length. The facts which are on record are not disputed between the parties. Looking to the grounds of detention, statements of three secret witnesses have been recorded on 14-11-2000, 15-11-2000 and 17-11-2000 in respect of the offence took place on 24-10-2000, 01-1-2000 and 07-11-2000. The said statements have been verified by the detaining authority on 14-12-2000 by the Divisional Police Officer and on 26th December, 2000 by the detaining authority and the detention order has been passed on 30th December, 2000. Therefore, there is delay of about over one month in verification by the Divisional Police Officer, over one month in verification by the Detaining authority and there is further delay in passing the detention order of more than one and a half month in view of the fact that the registered offence dated 16th July, 2000, whereas the last unregistered offence is dated 7th November, 2000. Therefore, there is delay in passing the detention order of more than four and half months from the date of last offence and two months from the last unregistered offence in passing the detention order. Therefore, there was no immediate need to preventively detain the petitioner by way of detention and even it is not proved that there is any proximate with the offences and the order of detention and therefore, this delay though specific contention has been raised in ground [p] by the petitioner, no reply has been filed by the respondents and thus, the delay has remained unexplained and uncontroverted. Therefore, according to my opinion, when such delay has remained unexplained and when for the intervening period, as such there is no proximity with the offences or any such nexus established which required immediate preventive detention of the petitioner from the last registered offence or even from the last unregistered offence, therefore, view taken by this Court in reported decision in 1997 [1] GLH p.381, the relevant

observations made in para-21 are referred as under :-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 [2] Suppli. SCC 61."

#. In view of observations made by this Court and looking to the undisputed facts which are on record that the detaining authority has passed the detention order after period of four and half months from the date of last registered offence and even there was delay of one and half months from last unregistered offence, which remained unexplained as respondents have not filed any affidavit in reply and therefore according to my opinion, the order of detention is required to be set aside.

#. In the result, the present petition is allowed. The order of detention dated 30th December, 2000 passed by the District Magistrate, Bharuch is hereby quashed and set aside. The present petitioner - detenu who h Mohammed Salim Gulamnabi Sheikh who has been detained at Nadiad District Jail is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 23-7-2001 [H.K.Rathod, J.]

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